THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, 31st July, 2006

W.P.No.16743 of 1999

Between:

M/s.Aruna Service Station, Paloncha,
Rep. by its Proprietor Boinapalli Apparao … Petitioner

and

The Director of Civil Supplies,
Andhra Pradesh, Hyderabad and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

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O R D E R:

This Writ Petition is filed seeking a Certiorari to call for the records from the 1st respondent relating to the Proceedings in DCS.Ref.No.E2/585/99, dated 3-8-1999 confirming the Orders of the 2nd respondent in Proceedings Rc.No.E/1047/94, dated 2-6-1999 cancelling the petitioner's licence and to quash the same.

It appears that the petitioner is a dealer of Motor Spirit and High Speed Diesel of Bharat Petroleum Corporation Limited (BPCL). According to the petitioner, since 1964 it has been carrying on the business without any blemish and has been enjoying a very high reputation from the public of Paloncha town and its surroundings. Petroleum and diesel would be supplied in sealed carriers by BPCL and the invoices contain the density of the product. After the stocks are received, they would be unloaded into the underground tank and the density of the stock in the underground tank would be measured on the next day, since the underground tank contains the old product. While so, the stock received by it on 13-7-1993 was unloaded into Tank No.2 and the stock received on 14-7-1993 was unloaded into Tank No.1. In respect of the High Speed Diesel, the respective densities were measured on the next day and recorded the same in the density register maintained by it. On 15-7-1993, the Inspector of Police, Vigillance Cell, Civil Supplies Department,

Khammam, inspected the service station of the petitioner and checked various registers. He also conducted the density test in respect of both the motor spirit and high speed diesel and compared the same with the density register maintained by the firm, which are as follows:

	Tank No.1	Tank No.2
i) Density as per Register	0.8509	0.8458
ii) Density as per Test	0.8508	0.8483

Even in the Panchanama conducted by the Inspector of Police, Vigillance Cell, Civil Supplies Department, Khammam, it is stated as under:

> "The variations for M.S. and H.S.D. found within permissible limits.
>
> Two density tests are conducted with assistance of Manager Sri Satyanarayana, who is recording the density reading in the register maintained in the bunk for M.S. and H.S.D. As per the register, the density recorded for H.S.D-II. On the morning of 15-7-1993 is 0.8509. The bunk received 12 KL of H.S.D. on 14-7-1993 vide invoice No.83053. The density as per the invoice is 0.8525. As per the test conducted by us, the density is 0.8483. As per the register, the density recorded for HSD tank-I on the morning of 15-7-93 is 0.8509. The density as per the invoice is 0.8525. As per test conducted by us, the density is 0.8508. For M.S. the density recorded in the register is 0.7298 on 15-7-93. This bunk received M.S. on 8-7-93 vide invoice No.831721, 6 KLs of M.S. As per the invoice, density is 0.7278. As per the test conducted by us, the density is 0.7282. The density for M.S. and H.S.D. are found within the permissible limits".

Thus, there was no variation beyond the permissible limits in the density of HSD. However, it seems, the HSD was sent to the Analyst for report. The Analyst seems to have given a report stating that there is a variation in the density i.e. 0.0056. On the basis of the same, the licence of the petitioner was cancelled by the 2nd respondent by an Order dated 2-6-1999. Aggrieved by the same, the

petitioner filed an appeal before the 1st respondent, but the same was dismissed on 3-8-1999 holding that in respect of charge No.2 that the petitioner-management failed to exhibit price list-cum-stock board in the premises and charge No.4 that the analysis report shows variation in the density of quality of product were proved beyond any doubt. Challenging the same, the present Writ Petition is filed.

Sri B. Adinarayana Rao, learned counsel for the petitioner, strenuously contended that in the Panchanama as well as in the counter filed by the respondents they have accepted that neither there is any variation in the quantity nor in the density beyond the permissible limits; therefore, the impugned Orders are illegal and liable to be set aside.

The only ground on which the petitioner's licence was cancelled was that as per the Analyst report, the density was beyond the permissible limits i.e. 0.0056. When it is asked as to whether there is any procedure adopted for accepting the Analyst report for deciding the density as per law and whether it is permissible under the Rules, there is no answer from the respondents. However, the learned Government Pleader simply stated that in view of the guidelines issued by the Petroleum Corporation, these tests are being conducted; therefore, they have taken into consideration for the purpose of passing the impugned Order of cancellation of licence of the petitioner.

Absolutely, no power is vested in the authority for taking Analyst report for the purpose of deciding the density of the HSD as on that date. Further, it is nowhere stated that no stock was available, as on the date when the stocks were unloaded into the tanks of the petitioner and what exactly is the density thereafter. According to learned counsel for the petitioner, over a period of time, the density in the balance remained in the underground would be going higher and

higher, since the entire stock would not be lifted as soon as the fresh stocks are received. Therefore, the stocks have necessarily to be unloaded into the ground tank where some balance is available. As such, there is every possibility of some variance in the density recorded in the invoices and density recorded on the next day in the register and thereafter.

Be that as it may, the Panchanama as well as the counter admit that the variation of M.S. and H.S.D. were found within the permissible limits and the density test conducted also does not show that it is beyond the permissible limits i.e. 0.0030. Further, there is yet another ground on which the licence of the petitioner was cancelled i.e. there was no proper exhibition of price list-cum-stock board. In this regard, the petitioner gave an explanation stating that it was exhibited, but it missed the attention of the authorities. Once the registers maintained by the petitioner do not show any variation as to the stocks and the variation in the density is within the permissible limits, on the trivial ground, such as, non-display of price list-cum-stock board, the licence of the petitioner could not have been cancelled. Therefore, the cancellation of the licence of the petitioner made by the 2nd respondent on 2-6-1999 as confirmed by the 2nd respondent through his Order dated 3-8-1999 are arbitrary and illegal and as such, the impugned Orders are liable to be set aside; accordingly, set aside.

The Writ Petition is, therefore, allowed. No order as to costs.

31-7-2006

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